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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/666,396

09/18/2003

Theodore Benderev

MEDTR-001A

9330

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04/14/2008

STETINA BRUNDA GARRED & BRUCKER  
75 ENTERPRISE, SUITE 250  
ALISO VIEJO, CA 92656

EXAMINER

HOEKSTRA, JEFFREY GERBEN

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

04/14/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/666,396	<b>Applicant(s)</b> BENDEREV, THEODORE
	<b>Examiner</b> JEFFREY G. HOEKSTRA	<b>Art Unit</b> 3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 2-5,7,9,10,12-15,17 and 20-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6,8,11,16 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/27/2008 has been entered.

### ***Notice of Amendment***

2. In response to the amendment filed on 02/27/2008, amended claim(s) 1 and 11, withdrawn claim(s) 2-5, 7, 9-10, 12-15, 17, 19-29, and new claim(s) 30 is/are acknowledged. The following new and reiterated grounds of rejection are set forth:

### ***Claim Objections***

3. Claims 1, 11, and 30 are objected to because of the following informalities: the positive recitation of "the pressure" in line 1 appears to lack antecedent basis, may render the claim indefinite, and should apparently read "a pressure". Appropriate correction is required.

4. Claims 1, 6, 8, 11, 16, and 18 are objected to because of the following informalities: claims 11, 16, and/or 18 are objected to as being substantial duplicates of claims 1, 6, and/or 8, respectively. The conflicting claims are coextensive in scope

despite a slight difference in wording. The structural limitations of the claims are identical (e.g. a device comprising *inter alia*: a sensor in operative communication with a monitor to measure, produce a signal, and provide a quantifiably indication of a compressive force by) and the claims merely recite functional recitations as the only differing limitations (e.g. "determining the amount of pressure between a first anatomical structure and a second anatomical structure" versus "determining the pressure exerted within an anatomical structure").

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1, 6, 8, 11, 16, 18, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Murphy et al. (US 5,752,522, hereinafter Murphy).

7. For claims 1, 6, 8, 11, 16, 18, and 30, Murphy discloses an anatomical pressure-sensing device (as best seen in Figures 1, 5, and 6) as broadly as *structurally* claimed, comprising:

- a pressure sensor (10) comprising an encapsulated member (10) having a membrane (balloon element 60) enclosing an encapsulated volume (the internal volume of balloon element 60) (as best seen in Figures 5 and 6) therewithin and having a body of supportive material (62) (the foam positively recited in column 9 lines 12-35) disposed within the membrane that defines the encapsulated volume (column 9 lines 12-35),

- wherein the sensor has a link (34) extending therefrom for transmitting a signal (column 8 lines 45-46),
- wherein the sensor is capable of being positioned within and between anatomical structures,
- wherein the sensor measures and produces the signal corresponding to the compression pressure exerted by and/or against said anatomical structures (column 5 lines 40-53),
- wherein the supportive material is compressive foam disposed within the encapsulated member (the foam positively recited in column 9 lines 12-35), said compressive foam being capable of incrementally transitioning between a first expansive state when a first baseline amount of pressure is applied and a second compressed state having a reduced volume corresponding to a second higher externally applied pressure as a result of an externally applied higher pressure (column 9 lines 12-35); and
- a monitor (column 3 lines 19-38 and column 7 lines 54-56) coupled to said link for receiving said signal and providing a quantifiable indication of said measured signal.

### ***Response to Arguments***

8. Applicant's arguments filed 02/27/2008 with respect to claims 1, 6, 8, 11, 16, 18 and 30 have been considered but are moot in view of the new ground(s) of rejection, wherein the new grounds of rejection includes a different interpretation of the previously applied prior art.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY G. HOEKSTRA whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J.H./  
Jeff Hoekstra  
Examiner, Art Unit 3736

/Max Hindenburg/

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Supervisory Patent Examiner, Art Unit 3736